

REMARKS

Claims 16, 18-25, 27-28, 30-34 and 36-39 remain pending in the application. Reconsideration of the rejections set forth in the aforementioned Office Action is respectfully requested in view of the above amendments and following remarks. The basis for these amendments can be found throughout the specification, claims and drawings as originally filed. Additionally, Applicant respectfully submits that no new issues of patentability have been raised by the above amendments.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 103

Claims 16, 18-25, 27-28, 30-34 and 36-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kladders et al., U.S. Patent No. 5,833,088. Applicant respectfully traverses this rejection.

The Examiner alleges that "Kladders discloses most of the elements of the claims, but may be missing elements such as 'heat set' and 'wide mouth'. On the other hand such containers appear to be conventional. Moreover, the closure and container combination of Kladders is not disclosed in the reference as having any elements that are incompatible with the 'heat set' or 'wide mouth' limitations, or with any other known elements that may be deemed to be missing from the reference. For example Kladders does not teach that the prior art closure/container combination disclosed is not 'heat set' or 'wide mouth'. Accordingly, it would have been obvious in view of Kladders to provide the container/closure combination therein with the missing elements of the claims, for

the purpose of improving the ability of the combination to be used with specific content.” Applicant respectfully disagrees with the Examiner’s characterization that Kladders et al., alone or in combination with any of the other references cited, renders Applicant’s claimed disclosure obvious.

It is respectfully submitted that Kladders et al. teaches “containers for pharmaceutical solutions which are used in certain inhalers which meter liquids by means of a measuring chamber....Since the liquid to be metered in this case frequently contains highly effective pharmaceutical substances which have to be accurately metered, the range of fluctuations in the dosage administered must be as small as possible; otherwise, the patient will not receive the quantity of active substance prescribed by the doctor. In view of the tiny amount of liquid administered per dose, even relatively small bubbles lead to high percentage deviations in the above-mentioned inhalers.” See Kladders et al. at Col. 1, lines 12-23. Applicant disagrees with the Examiner’s statement that the above-quoted portion of Kladders et al. is not “necessarily limiting”. Applicant submits that at the very least, it is enlightening with respect to the interpretation and relevance of the invention disclosed in Kladders et al., and should be afforded more weight than that given by the Examiner.

Contrary to the Kladders et al. cited reference, Applicant’s closure and heat set, wide mouth container combination disclosure is particularly useful for hot-filled and pasteurized products packaged in a heat set polyester container with a wide mouth opening, and for packaging oxygen sensitive foods and beverages where a longer shelf life is desirable. Accordingly, it is respectfully

submitted that one of ordinary skill in such art would not look to the Kladders et al. disclosure for assistance or motivation. As such, Applicant's claimed disclosure provides for a heat set container, that is, a container capable of withstanding fill temperatures greater than 82° C without experiencing unwanted deformation. Additionally, Applicant's claimed disclosure provides for a wide mouth container. Wide mouth containers typically have and require more headspace thus, more oxygen exists to spoil the contents of the container. Wide mouth containers also create more vacuum during hot fill. Applicant's claimed disclosure solves these specific problems, unlike the Kladders et al. disclosure. Moreover, Applicant's claimed disclosure solves these specific problems without the need for separate vents (6) and sealing rings (9) as required in Kladders et al.

Specifically in this regard, amended independent Claims 16 and 33 recite "[a] closure and heat set, wide mouth container combination". Kladders et al., alone or in combination with any of the other references cited, does not disclose, teach or suggest any structure similar to "[a] closure and heat set, wide mouth container combination" as recited in independent Claims 16 and 33 of Applicant's claimed disclosure. There is no motivation or incentive in Kladders et al., alone or in combination with any of the other references cited, to arrive at Applicant's disclosure as claimed.

Applicant respectfully disagrees with the Examiner's characterization that Kladders et al. does not disclose "any elements that are incompatible with the 'heat set' or 'wide mouth' limitations". It is respectfully submitted that modifying

the Kladders et al. cited reference so as to cover a “wide mouth” container as defined in Applicant’s claimed disclosure would improperly render the Kladders et al. container unsatisfactory for its intended purpose. If the proposed modification would render the prior art invention as being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. See MPEP § 2143.01.

Accordingly, for the sake of brevity, it is respectfully submitted that in view of Applicant’s arguments stated above, Kladders et al. is an improper primary reference, and Applicant’s claims are patentability distinct with respect thereto, as well as no teaching in existence to suggest the combination of the references. Obviousness is not established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting such combination. “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (Citation omitted). See MPEP § 2143.01. As such, it is respectfully submitted that the Examiner’s conclusory statements, such as for example, “Kladders does not teach that the prior art closure/container combination disclosed is not ‘heat set’ or ‘wide mouth’” is clearly improper. Additionally, according to recent U.S. Supreme Court case law, there must be an apparent reason to combine the references. In the Office Action, the Examiner did not present any such reasons why it would be obvious to combine the references. As a result, Applicant respectfully submits that the Examiner has failed to identify any motivation by one of ordinary skill in the art to

combine or modify the art to arrive at the claimed disclosure other than the impermissible use of hindsight.

While it is Applicant's view that the claims as written are not obvious in light of the cited art and fully comply with Section 103, in the interest of expediting prosecution and without prejudice to pursuing this and related subject matter in future applications, Applicant has amended independent Claims 16 and 33. Therefore, independent Claims 16 and 33 should be in condition for allowance. Further, because Claims 18-25, 27-28, 30-32, 34 and 36-39 depend from Claims 16 and 33, they are at least as limited, are similarly not taught by Kladders et al., alone or in combination with any of the other references cited, and should also be in condition for allowance. In view of the above amendments and these remarks, Applicant respectfully requests the Examiner to reconsider and withdraw the Section 103 rejection to Claims 16, 18-25, 27-28, 30-34 and 36-39.

CONCLUSION

Applicant respectfully submits that the above amendments require only a cursory review by the Examiner and place the application in a better form for appeal. Moreover, no new issues of patentability have been raised.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests the Examiner to reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the

outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, he is invited to contact the undersigned at his earliest convenience.

Respectfully submitted,

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